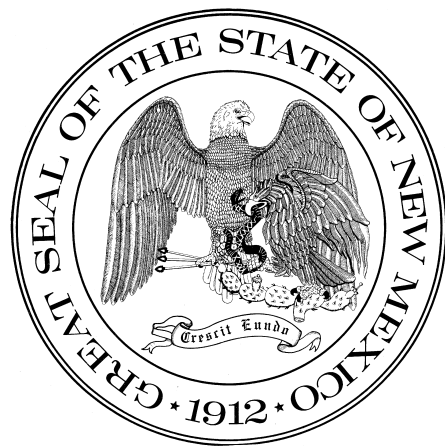


**Capital Outlay Subcommittee
of the
New Mexico Legislative Council
and the
Legislative Finance Committee**

**2006
INTERIM REPORT**



**New Mexico State Legislature
Legislative Council Service
411 State Capitol
Santa Fe, New Mexico**

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SUMMARY OF THE INTERIM WORK OF THE CAPITAL OUTLAY SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL AND THE LEGISLATIVE FINANCE COMMITTEE

The capital outlay subcommittee was created this interim as a subcommittee of the legislative council and the legislative finance committee to look at issues surrounding the capital outlay process and make recommendations on improving that process. The subcommittee met four times, in August, September, October and December. During the course of these meetings, the subcommittee heard testimony on the history of the capital outlay process and on how New Mexico compares with other states in capital outlay procedures and processes. Because New Mexico received such a low ranking from *Governing Magazine* on its capital outlay process mainly due to the perceived lack of planning that goes into many capital projects that are funded, the subcommittee also reviewed planning processes that are currently in place, such as through the public school facilities authority, the aging and long-term services department, the higher education department and the local government division's infrastructure capital improvements planning (ICIP) process.

Another area that was much discussed is establishing criteria for both statewide and local projects. This criteria could be used to prioritize both state and local projects to determine which projects get funded. Because one of the perceived problems with the current capital outlay process is communication between the legislative and executive branches on funding statewide projects, the subcommittee also heard testimony on the executive's infrastructure planning and prioritizing processes. Other difficulties that were discussed include finding a mechanism to ensure the full funding of projects, funding projects that are not actually priorities of local governments and creating a relationship between the planning processes that are in place and the projects that are actually funded by the legislature.

During the final meeting of the subcommittee, several recommendations were adopted that include the following:

- a new capital outlay request form that includes questions on needs-based and planning criteria and delineates additional requirements for project funding for nonprofit entity, economic development and non-ICIP projects;
- listings will be produced for each legislator that include all requested capital outlay projects on a twice-weekly basis (rather than producing final documents in the thousands). Then at bill introduction deadline, one capital outlay request containing all of a legislator's projects will be produced for "introduction" on the house and senate floors;
- a time line for the production of the capital outlay bill that includes a submission deadline for the executive and legislative branches, dates for deciding statewide priorities and funding levels, enough time for the legislative council service to produce a bill and a date for bill passage that would be early enough to require action by the governor before the session ends;
- no operational or program funding in the capital outlay bill; and
- establishment of an interim capital outlay committee.

2006 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
CAPITAL OUTLAY SUBCOMMITTEE OF THE
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE

Members

Rep. Ben Lujan, Co-Chair
Sen. Ben D. Altamirano, Co-Chair
Sen. Kent L. Cravens
Sen. Dianna J. Duran
Sen. Joseph A. Fidel
Sen. Carroll H. Leavell
Rep. Terry T. Marquardt
Rep. W. Ken Martinez
Rep. Brian K. Moore
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Sen. John Arthur Smith
Rep. Jeannette O. Wallace
Rep. Donald L. Whitaker (Rep. Edward C. Sandoval)
Rep. Teresa A. Zanetti

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. H. Diane Snyder

The legislative council created a subcommittee of the council and the legislative finance committee to focus on capital outlay issues during the 2006 interim. The subcommittee's charge is as follows:

1. to recommend improvements in prioritizing statewide and local projects;
2. to minimize the number of requests to more closely match available funding amounts;
3. to improve the communication process between the house and senate and between the legislature and the executive; and
4. to review other issues the subcommittee deems appropriate.

APPROVED WORK PLAN

To carry out this charge, the subcommittee shall:

- hear testimony on the history of the capital outlay process;
- review criteria for national ranking of states' capital outlay processes;
- receive testimony from state agencies and councils of governments to discern good planning processes already in place and to establish coordination among these processes;
- propose a means of looking at statewide need and prioritizing statewide project funding by project category;
- propose criteria for project prioritization and funding;
- develop time lines and procedures for consideration of the executive branch's capital requests;
- propose a method for effective communication between the house and senate and the legislature and executive during the capital budget process;
- propose a policy for reauthorizations, which could include subcommittee review and limiting scope and time extensions; and
- streamline project implementation and monitoring procedures.

APPROVED MEETING SCHEDULE AND BUDGET

The following approved meeting dates track with legislative council or legislative finance committee meeting dates for the 2006 interim and for the most part are the day before or the day after those scheduled meetings.

<u>Date</u>	<u>Location</u>
August 23	Santa Fe
September 26	Santa Fe
October 23	Santa Fe
November 22	Santa Fe
December 19	Santa Fe

Revised: August 16, 2006

TENTATIVE AGENDA
for the
FIRST MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE OF THE NEW MEXICO LEGISLATIVE
COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE

August 23, 2006
Room 307, State Capitol
Santa Fe

Wednesday, August 23

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **History of the Capital Outlay Process**
—Paula Tackett, Director, Legislative Council Service (LCS)
—Renée Gregorio, Capital Outlay, LCS
- 10:30 a.m. **Criteria for National Ranking of States**
—Linda Kehoe, Capital Outlay, Legislative Finance Committee
- 11:00 a.m. **Capital Outlay Processes: A Comparison with Other States**
—Mark Bolton and Edward Mazel, LCS Interns
- 12:00 noon **Lunch**
- 1:30 p.m. **Planning Processes Currently in Place**
—Bernardine Salazar and DeAlva Calabaza, Capital Projects
Coordinators, Aging and Long-Term Services Department
—Bob Gorrell, Public School Facilities Authority
—Miguel Hidalgo, Capital Outlay, Higher Education Department
—Hubert Quintana, Southeastern New Mexico Council of Governments
(COG)
—Priscilla Lucero, Southwestern New Mexico COG
—Infrastructure Capital Improvement Process Representative, Local
Government Division (LGD), Department of Finance and
Administration (DFA)
- 3:30 p.m. **Process for Agency Monitoring of Capital Outlay — How It Works**
—Rick Martinez, Deputy Secretary, DFA
—Sam Ojinaga, Deputy Director, LGD, DFA
- 4:15 p.m. **Discussion and Directions to Staff**
- 5:00 p.m. **Adjourn**

Revised: September 21, 2006

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**September 25-26, 2006
Room 307, State Capitol
Santa Fe**

Monday, September 25

1:30 p.m. **Call to Order**

1:35 p.m. **Process for Agency Monitoring of Capital Outlay — How It Works**

- Robert Apodaca, Director, Local Government Division (LGD), Department of Finance and Administration (DFA)
- Rick Martinez, Deputy Secretary, DFA

2:30 p.m. **Survey of Capital Funds: Descriptions and Balances**

- Paula Tackett, Director, Legislative Council Service (LCS)
- Linda Kehoe, Capital Outlay Coordinator, Legislative Finance Committee (LFC)
- Mark Valenzuela, Government Affairs Director, New Mexico Finance Authority

3:30 p.m. **Requested Timelines for Capital Outlay Bills**

- Paula Tackett, Director, LCS
- John Yaeger, Assistant Director, LCS

4:15 p.m. **Possible Criteria for Statewide Need and Preliminary List of Projects**

- Paula Tackett, Director, LCS
- David Abbey, Director, LFC

5:00 p.m. **Recess**

Tuesday, September 26

8:30 a.m. **Certification Procedures and Determination of Bonding Capacity for Capital Projects**

- Olivia Padilla-Jackson, Director, State Board of Finance

10:00 a.m. **LFC Quarterly Report of Outstanding Projects**

- Linda Kehoe, LFC

12:00 noon **Adjourn**

Revised: October 13, 2006

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**October 16-17, 2006
Room 307, State Capitol
Santa Fe**

Monday, October 16

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Committee Business and Minutes**
- 10:15 a.m. **Capital Outlay Projects: Engineering/Design Industry Perspective**
—David Maxwell, PE, Engineers, Inc.
—Dick Brown, PE, ASCG of New Mexico
- 11:15 a.m. **New Mexico Finance Authority (NMFA) Capital Funds**
—Jeremy Turner, Chief Financial Adviser, NMFA
- 12:15 p.m. **Lunch**
- 1:30 p.m. **Water System Financing and Regionalization: How New Mexico Compares**
—Heather Himmelberger, Director, Environmental Finance Center, New Mexico
Institute of Mining and Technology
- 2:30 p.m. **Executive Infrastructure Planning Process, Statewide Capital Criteria and Executive Priorities**
—Katherine Miller, Secretary of Finance and Administration
- 3:30 p.m. **Organizing and Communicating Infrastructure Needs in the State**
—Bill Fulginiti, New Mexico Municipal League
—Richard Smith, Curry County Manager, New Mexico Association of Counties
- 4:30 p.m. **Recess**

Tuesday, October 17

- 9:00 a.m. **Work of the Interagency Task Force**
 —Richard Rose, Bureau Chief, Construction Programs Bureau, Department of
 Environment
- 10:00 a.m. **Staff Response to Subcommittee Questions from September Meeting**
 —Paula Tackett, Director, Legislative Council Service (LCS)
 —Ric Gaudet, LCS
- 11:00 a.m. **Next Steps — Subcommittee Discussion and Direction to Staff**
- 12:00 noon **Adjourn**

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

December 19, 2006

Room 307

State Capitol

Tuesday, December 19

1:00 p.m. Call to Order and Approval of Minutes

1:10 p.m. Capital Drafting Process Improvements
—Renee Gregorio and Paula Tackett, Legislative Council Service (LCS)

2:00 p.m. Criteria for Funding State Projects and Preliminary Proposals
—Linda Kehoe, Legislative Finance Committee
—Paula Tackett, LCS

2:45 p.m. Criteria for Funding Local Projects
—Ric Gaudet and Paula Tackett, LCS

3:15 p.m. Timeline for Capital Bill Production, Introduction and Passage
—John Yaeger and Paula Tackett, LCS

3:30 p.m. Additional Proposals for the Legislature on Capital Outlay:

- no program funding in the capital outlay bill;
- determine statewide priority areas the legislature needs to address;
- establish a joint interim committee for capital outlay;
- provide planning assistance for small communities;
- require councils of governments to work with local governments on infrastructure planning;
- establish local share/match requirements for local projects;
- consider dedicated revenue stream for infrastructure for higher educational institutions; and
- consider changing the nature of the drinking water state revolving loan fund to give grants and loans.

5:00 p.m. Adjourn

**MINUTES
of the
FIRST MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**August 23, 2006
Room 307, State Capitol
Santa Fe**

The first meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee was called to order at 10:15 a.m. by Speaker of the House Ben Lujan, Co-Chair, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Ben Lujan, Co-Chair
Sen. Ben D. Altamirano, Co-Chair
Sen. Kent L. Cravens
Sen. Dianna J. Duran
Sen. Carroll H. Leavell
Rep. Terry T. Marquardt
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Jeannette O. Wallace
Rep. Teresa A. Zanetti

Absent

Sen Joseph A. Fidel
Rep. W. Ken Martinez
Sen. Leonard Lee Rawson

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Timothy Z. Jennings
Sen. H. Diane Snyder

Sen. Stuart Ingle

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Mark Bolton, Legislative Council Service (LCS)
Ric Gaudet, LCS
Renée Gregorio, Capital Outlay, LCS
Linda Kehoe, Capital Outlay Coordinator, LFC
Jeannae Leger, LFC
Ed Mazel, LCS
Paula Tackett, Director, LCS

Guests

The guest list is in the meeting file.

Speaker Lujan welcomed the subcommittee members and guests to the meeting and expressed hope that the subcommittee could make progress on recommending reforms to the capital outlay process.

History of the Capital Outlay Process and Charge of the Subcommittee

Paula Tackett, director of the LCS, and Renée Gregorio, capital outlay coordinator, LCS, gave a presentation on the background and history of the capital outlay process in New Mexico. Ms. Tackett began by presenting the charge to the subcommittee by the Legislative Council, which is to:

1. recommend improvements in prioritizing statewide and local projects;
2. develop realistic expectations regarding the number of requests to more closely match available funding amounts;
3. improve the communication process between the house and senate and between the legislature and the executive; and
4. review other issues the subcommittee deems appropriate.

Ms. Gregorio then presented a brief history of capital outlay appropriations, from 1971, when four projects were funded, totaling \$4.9 million, to 2006, when 4,294 projects were funded, totaling \$905 million. 1977 brought the first "Christmas Tree Bill", in which all the different projects that were funded were substituted into one bill. In that year, all of the projects were for "state purposes" and included state buildings improvements, state parks improvements, sewage systems, state hospital improvements, school bus routes, educational institution improvements and public school capital improvements. It is important to note that all the money for public school capital improvements went into a fund and was not given directly to individual schools. From the late '70s to the mid-'80s, capital outlay appropriations were mainly used to fund big projects that either affected a region of the state or were state assets that were being increased or maintained.

The legislature enacted the New Mexico Community Assistance Act in 1977 to implement a planning process for local projects around New Mexico. Projects were funded by the legislature through that act after they had been approved by the New Mexico Community Development Council. This planning and prioritization process continued through 1985, but was not continued or funded after that. Since 1987, the legislature has funded many projects through the Local Government Division (LGD) of the Department of Finance and Administration (DFA), without using the evaluation and selection process previously in place.

Historically, New Mexico has had various funding mechanisms in place in which money was appropriated for needed local projects, including for public schools and water supply and sewage works. In the past, because of less demand on those funding sources, projects tended to be fully funded.

Ms. Tackett then described the changes that have happened since 1985. In 1986, funding

for individual legislator's local projects began encroaching on the money available for state projects. By 1990, the little money available for state projects was deemed to come from the governor's one-third share of capital outlay money available. Many state needs were also put into general obligation (GO) bond bills, which require approval of the voters.

Until 1998, all appropriations for capital outlay projects were introduced as individual bills, which over time grew into a nightmare of bill drafting and processing, jacket preparation and introduction, and finally substitution into the capital outlay substitute bill. As the number of capital outlay projects introduced grew to unmanageable proportions, it became difficult to even read the daily bill locator to determine which bills were *not* capital outlay. So the Legislative Council authorized a process, made permanent in 2001, whereby all capital outlay projects would be drafted as "capital outlay requests" and later incorporated as amendments into the capital outlay bill. These requests could be handled more informally, without having to spend precious floor time introducing them as bills and referring them to committees. Staff time handling capital outlay requests in the LCS and chief clerks' offices was also streamlined.

However, given the streamlined capital outlay process, the number of requests has exploded since 2001. Now staff must deal with literally thousands of requests, most of which get dropped off at the LCS in January and February. In 2006 alone, there were 7,692 capital outlay requests prepared and filed, requesting \$6 billion. Only 15 percent of the amount requested, \$905 million, was actually funded.

Ms. Tackett then described some of the other internal improvements to the capital outlay process that have occurred, including standardization of information needed to process requests, development of request language appropriate to different agencies' needs, development of procedures for the capital outlay process, improvements to the database used to produce the capital outlay bill and track requests and additional training of house and senate session staff on the process. Legislators also have begun grouping together to fund projects, making it more likely that projects will be fully funded.

Finally, Ms. Tackett explained the growing problem of dealing with reauthorizations of previous capital outlay projects approved by the legislature, which reflects the huge increase in initial authorizations and the fact that many of those projects were either not funded fully, were not ready to proceed or were not actually desired on the receiving entity's part. She also said that there is a perception that previous authorizations somehow "belong" to the member who got them approved.

Following Ms. Tackett's and Ms. Gregorio's remarks, a lively discussion ensued among the subcommittee members. Representative Henry Kiki Saavedra asked what role the State Board of Finance plays in approving funding for capital outlay projects. Ms. Tackett responded that the board has a long list of criteria that receiving entities must comply with before it disburses any funds.

Senator Michael S. Sanchez said that he was confused about the allotment of capital outlay to the executive and legislative branches, especially with regard to "state" projects.

Speaker Lujan said that in the past, the executive would present to the legislature in its budget brief on the first day of the session a list of every capital project that the governor

wanted. Members could then sign on to projects they supported. Representative Edward C. Sandoval added that he used to carry the "governor's bill", which consisted of all the executive branch's capital outlay requests. That process has disappeared in the past few years, he said.

Senator Sanchez asked whether the governor has a deadline to present capital outlay projects to the legislature. Ms. Tackett replied that Section 6-4-1 NMSA 1978 requires state agencies to submit their capital needs to DFA by July 1 of each year. Those requests then become part of the executive's capital outlay request, and in the past were always part of the executive's budget proposal. As to whether the governor has a deadline to submit those requests to the legislature, Ms. Tackett said that legally, the deadlines imposed by the legislature do not apply to the governor. This past session, the LCS made a request to the executive, supported by the leadership, to comply with a time frame for introducing capital outlay. That request was not complied with.

Representative Janice E. Arnold-Jones remarked that she was not pleased with the timing for the executive's introduction of capital outlay. Nobody knew what those projects were until the bill was on the floor. She also wondered why studies and conferences were funded by the capital outlay bill. Ms. Tackett responded that capital outlay planning is a valid funding object. She also said that a few non-capital outlay items were inserted into the last session's bill and that the title of the bill was changed to cover the resultant constitutional issues. Representative Sandoval said that there should not be any program funding in the capital outlay bill. He also said there should not be any feasibility studies in the bill and that funding items such as computers and equipment with severance tax bonds (STBs) is not sound policy because of the limited life cycle of the items compared to the longevity of the bonds to pay for them. Representative Arnold-Jones agreed, saying that she never wants to bond a laptop computer again.

Representative Terry T. Marquardt asked what legal and constitutional restraints the executive branch has regarding deadlines for introducing capital outlay requests. Ms. Tackett responded that the constitution allows the legislature to create time frames for itself; those time frames do not apply to the executive. The governor can send messages whenever he wants. She added, however, that Section 6-4-1 NMSA 1978 provides some time frames the executive needs to comply with, as does the Accountability in Government Act. David Abbey, director of the LFC, said that the capital outlay budget is part of the overall budget, which is required to be presented to the legislature in early January. Ms. Tackett added that the governor can still add whatever projects he wants at a later date.

Representative Marquardt then asked LCS staff to help draft a bill that would set required time lines for the executive branch to follow regarding capital outlay. He also asked what recourse exists when the executive branch does not follow the law. Ms. Tackett responded that the legislature is not required to fund the governor's requests. Representative Marquardt asked what recourse there is when one of the legislature's committees does not follow its own rules. Ms. Tackett responded that it is ultimately up to the leadership of the legislature to enforce its own rules, since the courts have been very reluctant to get involved with legislative procedures. Representative Marquardt ended his remarks by noting that he had previously requested to insert non-capital appropriations into the capital outlay bill, but his request went unheeded.

Senator Timothy Z. Jennings then made several points about the capital outlay and budgeting process. Some of his remarks and recommendations included:

- * in previous years, there was very little general fund (GF) unappropriated surplus;
- * GF capital outlay funding does not need to follow bonding rules;
- * the legislature normally funds short-lived equipment with GF appropriations and would not bond those projects;
- * LCS staff is obligated to change the title of a bill in order to comply with constitutional requirements if a member inserts program funding into that bill;
- * the governor would never sign a bill requiring the executive to submit capital outlay projects by a certain time;
- * the legislature and executive used to meet to figure out how much surplus there would be; now the executive decides without consulting the legislature;
- * the house needs to send the GO bond bill to the senate earlier in the session;
- * there will be many more reauthorizations in the future because of the dramatic unbudgeted increase in construction supplies;
- * DFA needs to release funding for projects in a more timely fashion; and
- * if the executive does not like a particular project, it can very easily slow the project down to effectively stop it.

Senator John Arthur Smith said that DFA holds up projects because it wants language in the authorization to match the project exactly. Ms. Tackett said the LCS has worked with most of the agencies to develop appropriate language. Senator Smith also pointed out that the "HB 2, Jr." bill creates problems for the capital outlay process. Agreements between the house and senate suddenly get changed, and that means what is available for capital outlay is changed, which slows down the process. He also said that capital outlay funding for schools, especially for critical capital outlay, needs some improvement. Finally, he suggested that maybe each house should run its own capital outlay bill.

Senator Dianna J. Duran spoke about the reauthorization problem, saying that in the past, agencies would interpret authorization language broadly, but now they are very strict. For example, a Tularosa project needs to change the word "wastewater" to "water", which means another year will go by to complete the project. Ms. Tackett said that with the thousands of projects each year, agencies have gotten very strict with the language. Senator Duran asked whether the rules allowing prefiling of legislation apply to capital outlay requests. Ms. Tackett responded that the rules only apply to legislation.

Representative Saavedra noted that the house has hearings about nearly every capital outlay request, while the senate merely allocates a lump sum to each senator and lets the senator choose projects.

Criteria for National Ranking of States

Linda Kehoe, capital outlay coordinator, LFC, presented information about *Governing* magazine's ranking system to evaluate the efficiency and fairness of each state's method of allocating capital outlay. A copy of her presentation is in the meeting file.

Each year since 1999, *Governing* has published the grades of the 50 states on how well they manage their money, people, infrastructure and information. In 2005, New Mexico was given a grade of "B" for its budget and financial controls, "C+" for workforce development and "B" for information technology. However, New Mexico's grade for infrastructure management was "D+". The criteria used for evaluating the states' performance in infrastructure management included capital planning, project monitoring, maintenance, internal coordination and intergovernmental coordination.

In its overall summary of New Mexico's performance for infrastructure management, *Governing* states, "[c]apital planning is a virtual oxymoron in New Mexico. It would be hard to figure out a more fractious approach to making long-term public investments.... The governor, the House and the Senate each get an equal piece of the capital funding pie. Those monies then are spent to garner political goodwill, with no coordination or statewide blueprint. The result is that many capital projects are chronically underfunded, leading to construction delays or the abandonment of projects altogether."

Senator H. Diane Snyder asked whether the interagency task force was interviewed by *Governing* magazine. Ms. Kehoe responded that the only entity that *Governing* appeared to have interviewed was LGD of DFA. It did not talk to the Higher Education Department, the Aging and Long-Term Services Department or the Public School Facilities Authority, all of which do have good planning and prioritization processes in place. Senator Snyder suggested that *Governing* did not get a complete picture of New Mexico's capital outlay planning process, and the state probably does not deserve the D+ grade it received.

Senator Smith opined that energy-rich states like New Mexico tend to have poor planning processes because sudden increases in severance tax revenue leads to reckless spending, followed by lean years in which few projects get funded.

Capital Outlay Processes: A Comparison with Other States

Mark Bolton and Ed Mazel, LCS law school student interns, reported on their study this summer of how 13 other states allocate capital outlay. A copy of their presentation is in the meeting file. The areas of study included whether a state used severance taxes for capital outlay, whether there was an interim legislative committee and executive agency that was dedicated to planning capital outlay, whether there was a prioritizing process, whether deferred maintenance and operations and maintenance were planned, how local projects got funded and whether agencies were given earmarked funds or if they just received general fund appropriations for capital outlay. Mr. Mazel gave examples of different processes in other states that the subcommittee may wish to explore, including:

- * one state has 12 budget meetings across the state to determine infrastructure needs of localities;

- * some states dedicate Indian gaming revenue to capital outlay;

- * some states fund school projects first, before funding anything else; and

- * some states earmark a certain portion of severance tax revenue for local projects.

Mr. Mazel stated that there were several ways in which projects get prioritized and chosen. In some states the executive presents its capital plan, and the legislature does not get to tinker with it very much. Other states have interim legislative committees that develop a plan with the executive. Utah and Oregon both develop a statewide capital plan before projects can be introduced in the legislature for funding.

Senator Smith wanted to know what problems other states are facing in capital outlay. Mr. Mazel said that many states fund projects, but not fully, so they tend to stagnate and require reauthorization. The states with the best processes were those that had a central agency that would process all of the state's projects.

Representative Teresa A. Zanetti asked whether Mr. Mazel and Mr. Bolton studied how other states deal with tribal, county and municipal governmental capital outlay. Mr. Bolton responded that local projects tended to be funded in one of three ways:

- * each legislator inserts local projects into a capital outlay bill from the member's district;

- * local governments channel requests to state agencies, which in turn prioritize them and send the requests to the legislature; or

- * a portion of severance tax revenue is earmarked for local projects, and the money is distributed according to formulas based on local area populations.

The subcommittee recessed for lunch until 1:30 p.m.

Planning Processes Currently in Place

Aging and Long-Term Services Department (ALTSD)

After lunch, the subcommittee heard from several state agencies and regional organizations that have capital outlay planning processes. First, the subcommittee heard from Bernadine Salazar and DeAlva Calabaza, capital projects coordinators, ALTSD, about their department's planning and prioritization method. A copy of their handout is included in the meeting file. They reported that the ALTSD has divided the state into six planning service areas (PSAs). Each PSA scrutinizes needs and tracks inventories at its senior centers. The PSA then prioritizes needs based on the department's uniform criteria and submits that list to the department. The department then normally requests funding from the legislature only for projects rated critical or high-need.

Senator Jennings asked how the needs of senior centers are prioritized and how new construction is funded. He said the Joy-Hagerman senior center is over 50 years old and needs a new facility. Ms. Salazar responded that ALTSD usually does not request money for new construction; that decision is left to the discretion of legislators from that area. Ms. Kehoe mentioned that in the 2006 session, with such a large GO bonding capacity, many new construction projects were included in that bill.

Public School Facilities Authority (PSFA)

Robert Gorrell, director, and Tim Berry, deputy director, PSFA, presented information on how the PSFA assesses, prioritizes, funds and monitors public school capital outlay projects. A copy of their presentation is in the meeting file. Mr. Gorrell said that the PSFA, which is under the direction of the Public School Capital Outlay Council (PSCOC), has three pillars that guide its actions: adequacy, uniformity and fairness. Those three pillars establish the basis for all school construction and renovation projects across the state. Each school district first must ensure that its schools meet minimum safety and educational suitability standards. There is a uniform set of standards that apply to all schools, and each district may apply for funding. Finally, the New Mexico Condition Index ensures that funding is distributed to districts fairly, based on many criteria, including the relative need for the project, whether the district has a facilities master plan, whether the district has a plan for preventative maintenance, whether the district has used funding prudently in the past and whether the district can provide matching funds for the project. For critical capital outlay needs, including roof repairs and other deficiencies corrections to bring schools up to a minimum level of adequacy, the PSFA has a different, less stringent set of criteria to fund those projects. After a project has been approved and funded, the PSFA conducts a monthly status report on all projects in the state to determine whether the projects are proceeding according to plan and whether the PSFA needs to intervene in a project.

President Pro Tempore Altamirano asked whether the recent rainy season has affected current school construction and whether contractor capacity is adequate to complete school projects in a timely fashion. Mr. Gorell said that those construction projects that had foundations poured before the rains started are proceeding according to schedule, but those projects without foundations have been stalled. He also reported that private sector investment has begun to slow, which he believes will allow contractors to shift their focus to the public sector soon. In rural areas, contractor capacity has always been a problem, and it has been made worse by recent statutory changes to require subcontractors on public works projects to be bonded. He said that small rural contractors are not subcontracting state jobs anymore, due to that requirement. Mr. Gorrell said another problem is that out-of-state firms are not allowed to bid on a potential job unless they are currently licensed in New Mexico, which is a disincentive to bid.

Senator Cravens lamented that the legislature has legislated many contractors out of the state construction projects market.

Senator Duran asked why Tularosa High School was being renovated instead of replaced. Mr. Gorrell responded that in general, if a school building is sound and the renovation costs are less than 65 percent of the replacement costs, the PSCOC will instead fund a renovation. He said that he believes that the high school needs a new HVAC system, windows and flooring, but the building is structurally sound; therefore, the building probably will not be replaced. He stated, however, that the PSCOC has an appeal process that school districts can use.

Senator Duran then asked about the 20 percent match requirement and whether it can be waived. Mr. Gorell said the PSCOC can waive that requirement, but it has not been willing to waive the local match due to the high level of needs throughout the state. He also said that districts can get an emergency waiver of local funds, which will be offset against the district later.

Representative Zanetti asked how the New Mexico Condition Index works and why some schools were not high on the list, even though she knew they had critical needs. Mr. Gorell said that school districts need to apply for funding in order to get on the list and that some districts have revenue sources of their own for projects.

Senator Carroll H. Leavell asked whether a waiver of the 20 percent local match would be truly waived, or whether it would be offset later. Mr. Gorell said that recently passed legislation allows for "high-growth" areas to have the 20 percent match advanced to the district, which would be offset later. A true waiver could be given by the PSCOC, but it has not been willing to grant that waiver. Senator Leavell then said that he had voted for the subcontractor bonding requirement that had created such contractor paucity in the state and that he was now sorry that he voted for the bill.

Senator Snyder asked if there was a requirement by the PSCOC that school district maintenance staff have demonstrated expertise in the field. Mr. Gorell said there is no such requirement, but the PSFA does provide training to district maintenance staff.

Higher Education Department (HED)

Miguel Hidalgo of HED gave a presentation on his department's capital outlay planning process. Copies of his presentation materials are in the meeting file. He said that the department is undertaking a facilities condition index to assess the condition of all 16 million square feet under its jurisdiction. Each year, HED meets with each institution to receive its capital outlay and budget requests. The department holds hearings at each institution to help finalize its five-year facilities plan. The department has a list of criteria in order to evaluate the need for a particular facility. Only those projects that fall into the "significant need" category are recommended for funding. There is a period of several months each year in which the department and an institution work together to develop its plan, after which budget and capital outlay requests are submitted to the executive and legislature.

Representative Sandoval requested that legislators in an educational institution's region be notified when HED will be holding hearings at that school.

Senator Jennings expressed concern that HED does not involve the legislature until much later in the process. He said that the four-year schools do not want their smaller two-year branch campuses to grow or compete with them, so they tend to not let certain capital outlay projects get funded, and that HED is also causing problems with the smaller campuses. Mr. Hidalgo responded that the facilities condition index will recommend funding for all the most important projects, regardless of a project's location.

President Pro Tempore Altamirano reminded the subcommittee that the LFC does receive HED recommendations in December.

Economic Development Districts Council of Governments (COGs)

Hubert Quintana, Southeastern New Mexico Economic Development District COG, and Priscilla Lucero, Southwestern New Mexico Economic Development District COG, gave presentations on how each of their COGs plans and manages capital outlay projects. Copies of their presentations and handouts are in the meeting file. Mr. Quintana described the material that he uses to train local governments and entities in how to plan and prioritize projects. He said he spends much time teaching entities about how the capital outlay process works at the legislature and how to be prepared in order to request funding. After requests are made to the legislature, he tracks each project and presents each legislator in his COG area with a list of all proposed projects.

Ms. Lucero said that she encourages all governmental entities in her COG to develop an Infrastructure Capital Improvement Plan (ICIP) before trying to fund any project. She also tries to get each local government to have a top-five funding priority list for the legislature and, ideally, to have that priority list come directly from the ICIP. Before she forwards requests to the legislature, she tries to exhaust other funding sources. Ms. Lucero also said that COGs are the liaison between local governments and nonprofit entities. She helps those entities negotiate with a local government to find a fiscal agent for the entity. Otherwise, those nonprofits cannot receive any state funding for capital projects. Finally, she said local governments feel that there is a disconnect between ICIPs and what the legislature funds.

Senator Smith then commented that some boards of county commissioners are not responsive to certain unincorporated areas of a county and that those areas do not receive the capital funding that was appropriated for them. He suggested that the LGD should be a possible fiscal agent for the community in those situations. He also said that there needs to be coordination between both houses of the legislature to fully fund a project.

Mr. Quintana said that sometimes the legislature funds a project that a local government either does not want or cannot afford to maintain or operate.

Representative Sandoval agreed with Senator Smith that there needs to be better coordination between the two chambers, and he suggested that COGs could help provide that service.

Representative Marquardt said there is indeed a disconnect between local government projects and an ICIP. He said that local governments also try to get the governor to fund their projects, which leads to more confusion and conflicts over who gets credit for a particular project.

Representative Arnold-Jones asked why a local government would refuse to spend money appropriated to it. Ms. Kehoe said there are three reasons: not enough money was appropriated to start or finish the project; the local government does not have enough staff to operate or maintain the project; and the project does not fit within the government's own priorities. Ms. Kehoe reminded the subcommittee that money for operational expenses is not allowed to be inserted into capital outlay appropriations. She also said that sometimes the LGD does not know whether a city or county will be the fiscal agent for a particular project, which leads to delays in disbursements.

Local Government Division Infrastructure Capital Improvement Process

Ken Hughes of the LGD described how his division provides training to local governments in developing ICIPs. He said the LGD trains local governments to identify priorities, estimate project costs and look for different funding sources. He said that the sum of all federal, state and local infrastructure spending in the past 10 years was \$10 billion. He estimates that in the next five years alone, the state will need \$5 billion in infrastructure improvements, and local governments will need \$8 billion. Finally, Mr. Hughes reported that there is still over \$1 billion in unbonded capacity that local governments could use.

Discussion and Direction to Staff

President Pro Tempore Altamirano said that due to time considerations, the presentation on agency monitoring of capital projects would be postponed until the September meeting. He then proposed a modification to the subcommittee meeting schedule, changing the meeting time for its September 25 meeting to 1:30 p.m., followed by a morning meeting on September 26, beginning at 8:30 a.m. The subcommittee would also meet on October 16-17 and, if necessary, on October 23.

The subcommittee then entered into a discussion based on the ideas generated by LFC and LCS staff from previous years' reform attempts. A copy of those ideas is in the meeting file.

Representative Brian K. Moore said that it would be difficult to limit the number of capital outlay requests for legislators in large, multi-county districts.

Senator Snyder said she wants public input about how to reform the capital outlay process. She said that she would also like the subcommittee to hear from contractors and architects.

Representative Saavedra said that #3 on the charge to the subcommittee, to improve the communication process between the house and senate and between the legislature and the executive, was probably the most important issue to resolve. He also said that there needs to be more training of session staff and legislators about capital outlay. Then he suggested the legislature ensure the capital bill be delivered to the governor seven days before the session ends so that he is forced to act quickly, giving the legislature time to react, if needed. He also wondered why the governor gets 50 percent of the spending pot. Finally, he suggested that the appropriations committees be the final review for the capital bill, since it usually has an impact on the budget.

Representative Marquardt asked LCS staff to draft legislation that will facilitate the house, senate and governor to work together to establish time lines.

Senator Sanchez said the subcommittee needs to address the issue of the governor's and legislature's share and needs to find a method of getting the bill to the governor on time.

Senator Smith gave several recommendations for the subcommittee to resolve, including:

- * addressing the governor's and legislature's share of capital outlay money;

- * creating a method of determining state projects and prioritizing them;
- * agreeing early in a session on an available-funding amount; the legislature should decide that amount, not the governor;
- * reviewing the capital outlay bill in appropriations committees; and
- * setting deadlines.

Representative Arnold-Jones made four recommendations:

- * the legislature needs to decide whether to fund only state projects or also include local projects;
- * a capital outlay committee needs to meet in the interim;
- * there needs to be more tools available to make capital outlay data accessible; and
- * the subcommittee should determine local share requirements and set up parameters for funding different categories of projects.

Representative Zanetti agreed that there needs to be deadlines for all involved to follow, and she suggested that the subcommittee identify the top five discussion points to further develop.

There being no further business, the meeting adjourned at 4:45 p.m.

**MINUTES
of the
SECOND MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**September 25-26, 2006
Room 307, State Capitol
Santa Fe**

The second meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee was called to order at 2:00 p.m. by Speaker of the House Ben Lujan, co-chair, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Ben D. Altamirano, Co-Chair
Rep. Ben Lujan, Co-Chair
Sen. Kent L. Cravens
Sen. Dianna J. Duran
Sen. Carroll H. Leavell
Rep. Terry T. Marquardt (9/26)
Rep. W. Ken Martinez
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Jeannette O. Wallace
Rep. Teresa A. Zanetti

Absent

Sen. Joseph A. Fidel
Sen. Leonard Lee Rawson

Advisory Members

Rep. Janice E. Arnold-Jones (9/26)
Sen. Stuart Ingle (9/25)
Sen. H. Diane Snyder (9/25)

Sen. Timothy Z. Jennings

Attendance dates for members not present for the entire meeting are shown in parentheses.

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Kathleen Dexter, Legislative Council Service (LCS)
Ric Gaudet, LCS

Linda Kehoe, Capital Outlay Coordinator, LFC
Jeannae Leger, LFC
Janet Peacock, LCS
Paula Tackett, Director, LCS
John Yaeger, Assistant Director for Legislative Affairs, LCS

The guest list is in the meeting file.

Handouts

Copies of handouts and charts given by meeting presenters are in the meeting file.

Monday, September 25

Process for Agency Monitoring of Capital Outlay--How It Works

Robert Apodaca, director, Local Government Division (LGD) of the Department of Finance and Administration (DFA), and Rick Martinez, deputy secretary, DFA, gave the committee a presentation of how the LGD monitors capital outlay projects that have been authorized by the legislature. Mr. Apodaca said that the LGD maintains a "real time" monitoring system available online for agencies to update and for the public and receiving entities to access. He said that although the system is updated every day, state agencies are responsible for making updates on the progress of individual projects. Mr. Apodaca said that the new Statewide Human Resource, Accounting and Management Reporting System (SHARE) the state is now using will be able to extract capital outlay expenditures, so that information can be posted as well.

President Pro Tempore Altamirano asked whether the department has a specific timetable for disbursing funds. Mr. Apodaca replied that general fund agreements are sent out to local governments by mid-May, and severance tax bond (STB) agreements are sent out by July 15. Local governments usually sign those agreements and send them back to LGD within two to four weeks. Mr. Apodaca also said that the division usually reimburses local governments within seven days of receiving a requisition.

Speaker Lujan asked about project readiness and time frames for local governments. Mr. Apodaca responded that with regard to STBs, the State Board of Finance sets a time line for each sale of bonds, usually twice a year. If a local government misses a bond issue deadline, it has to wait until the next bond issue before it can begin the project.

Senator Sanchez asked about a particular project in Los Lunas in which money went to a private developer. Mr. Apodaca said that he thinks that project went through the Economic Development Department, and that each local government is required to have procedures in place for those types of economic development projects. Speaker Lujan asked that those procedures be clarified, and Representative Sandoval asked for a presentation on how nonprofit and private entities can receive funding from the state.

Senator Smith said that often local governments are ready to begin projects, but delays from state agencies result in cost increases, and that the longer a local government waits for funding to become available, the harder it becomes for the project to be completed. Mr.

Apodaca agreed, saying that sometimes state agencies do not send out their agreements to local governments in a timely manner, and sometimes the language authorizing a project is too narrow. Mr. Martinez said that he wants DFA to work with the LCS to further develop appropriate language for projects. Senator Smith then asked whether state agencies have sufficient staff to track capital outlay projects. Paula Tackett, director of the LCS, responded that in general, they do not have sufficient staff, especially the General Services Department.

Senator Leavell asked staff to provide the subcommittee with constitutional provisions and statutes regarding economic development exemptions to the antidonation clause.

Survey of Capital Funds: Descriptions and Balances

Ms. Tackett described to the subcommittee many of the statutory funds available for capital outlay projects. There are more than 45 statutory funds that can be used for capital outlay purposes, and 11 of those are administered by the New Mexico Finance Authority (NMFA). Many of the funds are dedicated to specific infrastructure needs, and are funded directly from an existing revenue stream and then either appropriated by the legislature or directly by the administering agency. Some of the more important funds that the legislature is involved with include the: Severance Tax Bonding Fund, General Fund, Property Control Reserve Fund, Public Buildings Repair Fund, State Road Fund, Public Project Revolving Fund, Water and Wastewater Project Grant Fund and Water Project Fund. Some funds that the legislature has given partial or complete control to other agencies include the: County Government Road Fund, Local Governments Road Fund, Public School Capital Outlay Fund, Wastewater Facility Construction Loan Fund and Drinking Water State Revolving Loan Fund.

Responding to a question from Representative Saavedra, Ms. Tackett said that the legislature authorized the NMFA to issue revenue bonds from the State Building Bonding Fund in order to construct several state office building projects, and that the NMFA would not be able to issue new bonds unless the legislature specifically authorizes them. Representative Saavedra suggested the legislature look into providing dormitories for legislators.

Senator Sanchez asked what happens to the Court Facilities Fund after the Bernalillo County Metropolitan Court building is finished. Ms. Tackett replied that the money in the fund will be diverted back to the Magistrate and Metropolitan Court Capital Fund, which can then be appropriated by the legislature.

Ms. Kehoe then described the recent financial activity of some of the other important capital outlay funds, besides the General Fund and Severance Tax Bonding Fund, to which local governments can apply for funding. These funds include the: Wastewater Facility Construction Loan Fund, New Mexico Irrigation Works Construction Fund, Water Project Fund, Tribal Infrastructure Project Fund and Water and Wastewater Project Grant Fund. She pointed out that the Water and Wastewater Project Grant Fund, which was created by the legislature to provide an orderly method of prioritization of water projects, has \$80 million in grant applications, but has not been funded by the legislature for a couple of years.

Ms. Kehoe also reported on some of the funds created by governor initiatives that are not statutory, including the: Water Innovation Fund, Colonias Infrastructure Fund and Rodeo Fund. The legislature has appropriated money for each of these initiatives.

Representative Saavedra asked how the Colonias Infrastructure Fund is distributed. Mr. Apodaca said that the county acts as the fiscal agent for the applying colonia. Senator Stuart Ingle asked whether the fund could be tapped to help neighborhoods convert to natural gas. Mr. Apodaca said he was not sure, but that he would look into it.

Representative Sandoval pointed out that the Rodeo Fund, which received appropriations in the 2006 capital outlay bill, had authorized expenditure for barrel clinics, which were not capital outlay. He then asked about the Child Care Facility Revolving Loan Fund, and whether loans went to private entities. Ms. Kehoe said that she did not know, but would bring the NMFA rules about the program.

Representative Zanetti asked why there are so many water funds, and why some of them do not receive funding. Ms. Tackett said that often, funds were created to receive federal grants, and over time, federal funding has changed. It may be helpful to clarify which funds may not be necessary any more, she said.

Representative Moore said that the Water Trust Board does not seem to be following legislative intent in funding water projects from the Water Project Fund.

Requested Time Lines for Capital Outlay Bills

Ms. Tackett and Mr. Yaeger presented a possible time line for introduction and passage of the capital outlay bill that gets the bill to the governor in time for him to be forced to act on it before the session ends. The key points of the time line include an early agreement between the house and senate about spending levels available for the bill. That decision has typically been decided at the last minute, after the general appropriation act has been passed. In order for this time line to work, the General Fund surplus and STB capacity need to be agreed upon by February 19 (for the 2007 session), so that the bill can be sent to the governor on March 9. Mr. Yaeger said that the suggested time line as written has much more detail than would a joint rule.

Senator Leavell asked when was the last time the legislature sent the capital outlay bill to the governor with enough time left in the session for him to act. Ms. Tackett responded that to her recollection, the legislature has never accomplished that.

Senator Sanchez said that he liked the time line, but wanted to know what will happen if the governor's requests are not received in time. Mr. Abbey responded, saying the LFC has had to deal with agencies that did not submit budgets in time. He said that if the executive wants an item considered, it needs to submit it to the legislature.

Senator Smith suggested that the members of the subcommittee think carefully the next few weeks about the actual dates, and then vote on the time line and joint rule at a future meeting.

Speaker Lujan finished the discussion by suggesting that forcing the governor to act within three days on such a huge bill may not be in the state's best interests.

Possible Criteria for Statewide Need and Preliminary List of Projects

Mr. Abbey and Ms. Tackett presented a list of criteria that could be used to prioritize a list of statewide capital outlay projects. They suggested that the legislature could use that set of criteria to then select statewide projects "off the top", before the traditional one-third split with the house, senate and governor. Ms. Tackett said that the secretary of finance and administration will present the executive's priorities at the October meeting.

Mr. Abbey then presented a list of projects for potential funding, including for public schools, educational technology, higher education deferred maintenance, state construction projects already in progress, renovation and construction of state agency facilities, water projects and road projects. Mr. Abbey said that the Higher Education Department (HED) will present the results of its comprehensive infrastructure inventory to the LFC in November.

Representative Sandoval asked about the possibility of leasing high-technology facilities. Ms. Tackett said that the constitution would probably need to be amended to allow for that.

President Pro Tempore Altamirano asked for a building condition index for facilities under the jurisdiction of the Property Control Division (PCD) of the General Services Department. Mr. Abbey said that the PCD will have an updated list in November.

Representative Sandoval asked how funding water settlements could be conceived as capital outlay. Mr. Abbey said that purchasing water rights adds to the balance sheet of the state, which can then be capitalized.

Representative Saavedra asked how much money this past session was vetoed for higher education. Mr. Abbey said that \$60 million was vetoed, but that he hoped the new HED facility condition list would alleviate many future vetoes, since higher education needs would be objectively assessed and prioritized.

Senator Snyder said that the NMFA gets some funding for projects based on a fee it gets from selling state road bonds, and that possibly the legislature should look into other user fees to finance projects. Ms. Kehoe said that former Representative Max Coll frequently advocated such a funding structure from building use fees, which the PCD would use for building repairs. Senator Snyder also suggested that county courthouses may need to be considered statewide projects.

Representative Sandoval suggested that the state repair roofs itself. Ms. Tackett responded that, in general, the state does not want to compete with the private sector.

Finally, Speaker Lujan said that in the past he had proposed getting HED to dedicate some of its institutions' permanent fund revenue for capital outlay, and then the state would provide a match for that funding. He said that, thus far, HED does not like the idea.

The subcommittee recessed at 5:05 p.m.

Tuesday, September 26

_____The Capital Outlay Subcommittee reconvened at 8:50 a.m.

Certification Procedures and Determination of Bonding Capacity for Capital Projects

Olivia Padilla-Jackson, director, State Board of Finance, gave a presentation on the State Board of Finance's role in the capital outlay process. She described first the time line that the board follows during a 30-day legislative session in order to issue STBs. Then she discussed how the board determines the bonding capacity of the Severance Tax Bonding Fund, which figure the legislature uses in its capital outlay bill.

The State Board of Finance is legally allowed to sell both short-term and long-term STBs. Short-term bonds are sold to the state treasurer, then the next day the money is deposited into the Public School Capital Outlay Fund, for direct expenditure by the Public School Capital Outlay Council. Up to 45 percent of the current year's bonding capacity is available for short-term STBs.

Fifty percent of the bonding capacity is available for long-term bonds, of which 10 percent is dedicated for water projects, and the rest is typically authorized by the legislature. If there is any remaining money in the bonding fund after accounting for current and previous years' bond expenses, it is deposited into the Severance Tax Permanent Fund, unless the legislature "sweeps" that money into another fund, usually the Public School Capital Outlay Fund.

Ms. Padilla-Jackson also said that the State Board of Finance, when issuing STBs for projects, ensures that the projects are planned correctly and that the language in the legislation passes constitutional muster. She said that in a given year, only a few are held up because of antidonation considerations.

Representative Saavedra asked why the State Board of Finance had rejected a project for the University of New Mexico that the legislature had previously approved. Ms. Padilla-Jackson said that she could not speak for the board, but that it was within its statutory authority to do so. Representative Saavedra asked staff to research what authority the board has to reject projects. He also asked if the board has the ability to invest the Severance Tax Permanent Fund in hedge funds. Ms. Padilla-Jackson said that the State Investment Council, which invests the fund, can invest a percentage of the fund in hedge funds.

Representative Arnold-Jones asked if the board issued long-term bonds for computers. Ms. Padilla-Jackson said that the legislature makes that decision, not the board. All STBs authorized by the legislature are 10-year bonds.

Representative Martinez asked what has happened to the growth of the permanent fund since the supplemental "squeeze" in the past several years. Ms. Padilla-Jackson said that although the fund has not had new distributions from the bonding fund, it still has grown at an average of eight percent for the past several years. This past fiscal year, however, the bonding

fund distributed \$123 million to the permanent fund. Ms. Peacock, LCS, clarified that although the corpus of the fund has still grown without additional distributions, it would have been even larger had the "squeeze" not occurred.

Representative Zanetti asked what the projected capacity for senior STBs for fiscal year 2007 is so far. Ms. Padilla-Jackson replied that it looks like the capacity will be \$529 million.

LFC Quarterly Report of Outstanding Projects

The subcommittee then reconvened as a joint meeting with the LFC for the rest of the morning.

Ms. Kehoe, LFC, and Mr. Apodaca, LGD, reported to the committees the status of outstanding capital outlay projects. Ms. Kehoe presented a chart that described the yearly capital outlay authorization, and how much from each year was actually expended. Since 1998, \$3.4 billion in appropriation or authorizations were enacted, and of that, \$1.96 billion has yet to be expended, most of which is from the past three years. She also provided a chart detailing the status of all appropriations and authorizations more than \$2 million. Finally, Ms. Kehoe reported on the construction market, and the challenges in getting approved projects built. For further details of her report, see the LFC minutes.

Representative Rhonda S. King asked whether it really is that difficult for out-of-state contractors to get a license. Ms. Kehoe replied that many contractors wishing to bid on a project in New Mexico find the process to be expensive and a hassle, since there is no guarantee that they will receive the bid.

Representative Luciano "Lucky" Varela asked whether the subcommittee is going to examine NMFA bonds. He suggested that the NMFA could become more involved in the overall capital outlay planning process.

Both Representatives King and Martinez expressed concern about money being appropriated for an amount that at the time of the appropriation was sufficient to complete a project, but by the time the money is allocated, the cost of the project has risen significantly. Representative Martinez suggested setting up a contingency fund that could be tapped in such circumstances. Ms. Kehoe replied that the Capitol Buildings Planning Commission is currently investigating that possibility.

Senator Phil A. Griego asked about STB reversions, and whether legislators are informed that one of their projects is about to expire. Ms. Kehoe said that the LFC provides a report on which projects may need to be extended, but that report is not sorted by legislator. Mr. Apodaca said that the LGD notifies the local entity that an appropriation will soon revert, but usually does not notify the sponsoring legislator.

Speaker Lujan said entities need a process in which they can do planning and design of a project early, so that when the legislature appropriates or authorizes STBs for that project, the construction can begin immediately. Often, entities have to wait two to three years to begin construction, which inevitably leads to cost increases.

Representative Arnold-Jones asked whether the LGD tracks projects in conjunction with the councils of government (COGs). Mr. Apodaca responded that his division does track projects with some of the COGs, but most have limited staffing for that purpose. Representative Arnold-Jones then wondered what has happened to the Albuquerque-area COG. Representative Sandoval said that not all COGs have the same function.

Representative Sandoval then asked why so much was still unexpended from 2001. Ms. Kehoe responded that she believed most of that money was from long-term supplemental STBs, which do not have the same time frame that regular STBs have. Representative Sandoval expressed concern that such a large amount of money authorized five years ago still had not been spent.

Representative Moore said that the planning, legislative and State Board of Finance processes take so long that local projects always have cost overruns. Mr. Apodaca said that the LGD is working with communities, so that cost overruns can be taken care of. He also said that the biggest problem in regard to project completion is lack of planning.

Representative Wallace said that projects should not be funded unless they have been engineered.

Representative Martinez suggested that the legislature could appropriate money to allow small local governments to plan and design projects.

Senator Sanchez asked whether there is a correlation between the LCS capital project number and the LGD number. Mr. Apodaca said that the LGD assigns a number to each project numerically, and that there is no direct connection between the two entities. After session, the LCS sends portions of the capital outlay database to LGD, which then assigns its own number to projects. Senator Sanchez then asked whether the seven full-time-equivalent (FTE) staff that was allocated by the legislature are actually working on capital outlay tracking, as specified in the law. Mr. Apodaca replied that those FTEs work on capital outlay projects as part of their responsibilities.

Mr. Apodaca then said that he believes that the capital planning process that the Public School Facilities Authority uses is an excellent one, and he hopes the rest of the state adopts a similar process. He also said that the method New Mexico uses to spend nonrecurring money has been a concern, and is reflected in the slightly lower bond ratings for the state. If the state had a better planning process, bond ratings might be higher.

Representative Arnold-Jones followed up on the FTE question, and asked Mr. Apodaca if all seven FTEs are spending all of their time tracking capital outlay. Mr. Apodaca responded that the LGD has been tracking more than 10,000 projects in the past six years, which is a huge task. He also said that those employees do not just track capital projects, but also work on project implementation, as well as other duties. He said that before the new FTEs were authorized, there were only two people in the LGD working on capital projects.

There being no further business, the subcommittee adjourned at 12:00 noon.

**MINUTES
of the
THIRD MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**October 16-17, 2006
Room 307, State Capitol
Santa Fe**

The third meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee was called to order at 10:40 a.m. by Senate President Pro Tempore Ben D. Altamirano, co-chair, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Ben D. Altamirano, Co-Chair
Rep. Ben Lujan, Co-Chair
Sen. Dianna J. Duran
Sen. Carroll H. Leavell (10/16)
Rep. Terry T. Marquardt (10/16)
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Jeannette O. Wallace
Rep. Teresa A. Zanetti (10/17)

Absent

Sen. Kent L. Cravens
Sen. Joseph A. Fidel
Rep. W. Ken Martinez
Sen. Leonard Lee Rawson

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Stuart Ingle
Sen. H. Diane Snyder

Sen. Timothy Z. Jennings

(Attendance dates for members not present for the entire meeting are shown in parentheses.)

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Ric Gaudet, Legislative Council Service (LCS)
Linda Kehoe, Capital Outlay Coordinator, LFC
Jeannae Leger, LFC
Paula Tackett, Director, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Monday, October 16**Capital Outlay Projects: Engineering/Design Industry Perspective**

Senator Snyder, executive director, American Council of Engineering Companies of New Mexico (ACEC), introduced the presenters from ACEC. David Maxwell, PE, Engineers Inc., and Dick Brown, PE, ASCG of New Mexico, gave the subcommittee the engineering and design industry's perspective on public sector capital outlay. Mr. Brown said that ACEC is the lead organization that implements the Professional Technical Advisory Board, which provides free advisory services to small communities.

Mr. Brown continued, saying that the current process does not allow for sufficient planning dollars for communities to plan well and that many communities do not have technical staff to address infrastructure needs. He also said that too many projects are funded inadequately and that funding is often delayed, which results in cost overruns and stalled projects. ACEC is recommending four main steps to improve the capital outlay process: infrastructure planning, use of the uniform funding application (UFA), good project implementation and a central capital outlay clearinghouse.

Mr. Maxwell described what constitutes good infrastructure planning. First, a community needs to complete its infrastructure capital improvements plan (ICIP), but not necessarily a full-blown critical needs assessment. The plan provides decision-makers with technically sound information, allows prioritization of projects, provides a clear picture of infrastructure needs, helps define regional and statewide projects and helps identify opportunities for resource sharing.

Mr. Maxwell said that the use of the UFA form, developed by several New Mexico and federal agencies, is a great tool for the capital outlay process. Currently, the Department of Environment (DOE) uses the UFA, and he hopes that other agencies will start using it also. Mr. Maxwell said that the UFA simplifies the funding process for communities, encourages communities to plan wisely and helps leverage state and federal dollars. The UFA could be expanded to provide a single point of entry for all capital outlay requests.

Another critical component in the capital outlay process is project implementation. Many small communities lack the resources to carry out projects well, which results in many delays and cost overruns. Mr. Maxwell said that ACEC is recommending that a central capital outlay clearinghouse be created to streamline the process. Components of this proposed clearinghouse include: a central repository for all project information; required participation of all funding agencies; dedicated staff to provide coordination; project evaluation criteria and prioritization of projects; and active legislative oversight. Finally, Mr. Maxwell said that the

state should consider funding projects in phases, rather than trying to include planning, design and construction in a single appropriation. The reason to fund in phases, he said, is that the planning and design phase may take one to two years, during which time the cost of the construction phase is almost sure to increase. That increase in cost makes it more likely that the project will not have sufficient funding to be completed.

Representative Sandoval asked whether increases in the cost of construction also affect the cost of planning and design (P&D) and also asked what the difference is between planning and design. Mr. Maxwell said that P&D fees are based on the original design and are not usually based on a percentage of the total cost of the project. Design is just the construction and engineering drawings, while planning actually decides what the best solution to a problem is.

Senator Smith said that infrastructure projects need a uniform revenue stream and that the UFA may help fund projects from multiple funding sources. He also said that communities should differentiate between needs and wants and that public officials need to go through a deliberative planning process. He also said that in his senate district, if a community does not complete its audit process for a project, he tries to get its funds withheld. He then said that local communities need to work with the New Mexico Association of Counties and the New Mexico Municipal League. Finally, he asked how many P&D firms are located outside of New Mexico. Mr. Brown replied that many of the firms comprising the ACEC have out-of-state offices but also have branches in New Mexico. Senator Smith expressed concern about out-of-state firms having a five percent edge over New Mexico firms because of state tax law. Finally, Senator Smith asked about the status of the letter that will be sent out to all municipalities and counties regarding the capital outlay process.

Senator Snyder said that she wants the legislature to oversee the capital outlay process.

Representative Saavedra asked how a community can figure out the cost of a project accurately if the planning has not been done yet. Mr. Brown said that projects should be funded in phases, so that P&D money can be used to estimate the construction cost more accurately. Senator Snyder also said that the Professional Technical Advisory Board provides free services to help communities to plan projects. Representative Saavedra asked why a few of the same big architectural companies seem to get most of the big jobs. Mr. Maxwell said that P&D firms tend to specialize in certain areas. Representative Saavedra said that it seems more important who you know rather than how good your bid is.

Representative Arnold-Jones said that she wants every state agency to use the UFA. She said that a process similar to the one used by the Public School Facilities Authority is essential for the rest of the state and that the legislature should oversee that process. She said that the legislature should establish a permanent legislative interim committee to prioritize infrastructure needs.

New Mexico Finance Authority (NMFA) Capital Funds

Jeremy Turner, chief financial advisor, NMFA, told the subcommittee about the various programs and funds the NMFA administers relating to the capital outlay process. The NMFA is

primarily involved in bond/loan financing structures, with some grant/loan programs. Since its inception in 1992, the NMFA has financed approximately \$2 billion in infrastructure projects.

Loan programs in which the NMFA is involved include the Public Project Revolving Fund, Drinking Water State Revolving Loan Fund, Child Care Facility Loan Fund and Smart Money Initiative. The first three funds are available to qualified entities for financing governmental capital projects or water projects and for child-care providers to improve their facilities. The Smart Money Initiative allows the NMFA to issue bonds and make loans and loan guarantees for qualified for-profit businesses for economic development purposes. Individual projects need to be authorized by the legislature.

The NMFA also has five grant/loan combination programs, including the Primary Care Capital Fund, Behavioral Health Capital Fund, Local Government Planning Fund, Water Trust Board projects and Local Transportation Infrastructure Fund. Finally, the NMFA administers the Water and Wastewater Project Grant Fund, which, when it was funded, provided grants to communities for water and wastewater projects. Since the legislature has not appropriated money to the fund for a few years, the NMFA is in the process of closing out the grants for previously authorized entities.

Senator Sanchez asked for what purposes the Local Government Planning Fund can be used. Mr. Turner said that money can be used for preliminary engineering reports (PERs), water conservation plans and economic development plans.

Representative Sandoval asked why the behavioral health regulations are not in place yet. Mr. Turner responded that the law was passed in 2005 and that the Department of Health should be finalizing its rules later in October. He said that the main rules for primary care capital funding are in place but that telehealth funding rules are still being drafted. Representative Sandoval asked that he be informed when the rules are adopted.

Representative Arnold-Jones asked what the problem is with the child-care facility program. Mr. Turner said that the Children, Youth and Families Department (CYFD) receives applications twice per year and then screens applicants. Only two projects have been approved, but they both have some financial issues to work out before receiving loans. He said that the NMFA and the CYFD are trying to make the loan process easier. Representative Moore said that NMFA board members have told him they are worried about loans to child care facilities going bad, because nobody wants to foreclose on kids' playground equipment. Mr. Turner said that ensuring the financial stability of loan recipients is the biggest problem with the program.

Senator Smith asked which private for-profit businesses have received assistance from the NMFA and how much money the state has spent on the Smart Money Initiative so far. Mr. Turner said he could provide that information later in the day. Senator Smith wondered if the NMFA has strayed from its main purpose. Mr. Turner said that the loan programs of the Public Project Revolving Fund are still the main focus of the NMFA, which has loaned over \$600 million since 1994. Senator Smith then said that he has real concerns about GRIP 2 and that he heard that GRIP 1 is also off-track. Mr. Turner said that the Department of Transportation is

now making regular drawdowns from the state transportation bonds that the NMFA issued and seems to be on schedule again.

Water System Financing and Regionalization: How New Mexico Compares

Heather Himmelberger, PE, director, Environmental Finance Center, New Mexico Institute of Mining and Technology, gave a presentation to the subcommittee about how other states finance water projects and how regionalization works in New Mexico. Ms. Himmelberger surveyed water project financing processes in 12 states. The most obvious trend in those other states is that, in general, the legislatures do not appropriate money directly to individual projects; rather, they have various financing mechanisms that take much of the politics out of the funding and prioritize important projects based on need. New Mexico has a combination of both direct legislative appropriation of water projects and some funding from dedicated revenue streams that the DOE generally oversees.

Most states have a type of drinking water loan fund that is funded mostly from the federal government with state matches. These types of programs are loan programs and usually require a local match. Some states also have loan/grant programs for water and wastewater projects that are funded according to criteria. Most of the states surveyed do not spend as much money on capital outlay as New Mexico does, but projects in New Mexico are generally not funded based on criteria.

Ms. Himmelberger also talked about regionalization possibilities in New Mexico. New Mexico has more than 1,000 water associations or districts, most of which operate alone. Many systems have only a few dozen connections and find it difficult to provide adequate bookkeeping, management and maintenance service to keep the systems running. Just by grouping together and hiring a bookkeeper, operator and technical serviceperson, water entities can save much money and avoid costly repairs due to deferred maintenance problems. Water systems do not have to be physically connected to each other to be regionalized; often it would be a foolish use of money to physically connect geographically distinct areas. Other benefits of regionalization include the ability to better cope with strict federal drinking water standards, the ability to be more flexible regarding water rights and the ability to attain economies of scale. Finally, Ms. Himmelberger said that New Mexico's policies have tended to discourage regionalization, mainly because of direct appropriations to water systems and no funding incentives to group together.

Representative Arnold-Jones asked whether the geography of New Mexico is a disincentive to regionalization. Ms. Himmelberger said that usually the DOE and her center at the university do not recommend physical connections between large distances. However, she said, regional management of water systems can be very cost-effective. She said she recently visited New Zealand, which has a population of four million. That country has 78 regional water entities, very few of which are physically connected. Each entity operates 15 to 20 water systems, and each system benefits from economies of scale and technical and financial expertise.

Representative Wallace said that it would be impossible to regionalize the water systems in the Jemez Mountains, no matter what is done, because they probably would not agree to be part of a larger system.

Representative Arnold-Jones said that she does not see the benefits of a larger bureaucracy managing multiple systems. Ms. Himmelberger said that some water systems may not need to regionalize, but that many cannot afford to hire professional bookkeepers and engineers and find it very expensive to comply with federal requirements. She clarified that she is not advocating mandatory regionalization, just that New Mexico needs to provide for more creative solutions.

Speaker Lujan said that he was interested to learn that most states fund water projects through an agency process rather than direct legislative appropriation.

Executive Infrastructure Planning Process, Statewide Capital Criteria and Executive Priorities

Katherine Miller, secretary of finance and administration, gave a presentation to the subcommittee about the executive branch capital planning process and some of its priorities for the upcoming session. She said that the Governor's Finance Council (GFC) this year split into several subcommittees, each of which assessed different categories of need in the state. She said that the GFC is merely a planning tool for the executive branch and not a "secret cabal".

Ms. Miller said that water projects are the governor's biggest priority this year, and she presented a list of over \$100 million in water-related projects that the executive is hoping to fund. She also talked about the desire to consolidate water project planning and implementation into a single Office of Water Infrastructure that would be under the jurisdiction of the Water Trust Board.

Ms. Miller also talked about the capital outlay process and said that one reason the state only has a "AA" bond rating is because of its lack of capital outlay planning. Finally, she reported that the Local Government Division (LGD) of the Department of Finance and Administration (DFA) is looking at many outstanding old appropriations and authorizations to see if they are still viable.

Representative Arnold-Jones asked Secretary Miller to define "bold" and "strategic", two words sprinkled throughout her handout. Ms. Miller said that what she meant was that she wants to look at statewide needs and take a large chunk of money to solve a few big problems. Representative Arnold-Jones said that sounded more like "good governance". She then asked what Ms. Miller meant by "core priorities". Ms. Miller responded that the department prioritizes general areas of need, like water projects and court facilities, and then decides individual projects based on those initial priorities.

Representative Sandoval asked whether the list of core policy objectives was in priority order. Ms. Miller said that they were not in order, except that water had been placed at the top of the list. She said that the executive wants to frame the capital outlay process in a new way by focusing on policy areas.

Representative Arnold-Jones asked how the proposed Office of Water Infrastructure would be implemented. Ms. Miller said that the idea is to consolidate employees from the DOE,

NMFA, Office of the State Engineer, DFA and Water Trust Board into one entity. The entity could be under the authority of the board, or it could be a separate stand-alone agency. Representative Arnold-Jones requested that every capital project the executive wants be presented to the legislature by the first day of session. Ms. Miller said she also hopes that happens, but she cannot guarantee anything.

Representative Saavedra asked who developed the water agenda and wondered why nothing had been allocated for water in the South Valley of Albuquerque, which essentially has poisonous water. Secretary Miller responded that members of the Water Infrastructure Team held public meetings, including with some legislators. She also said that the South Valley can apply for funding from the Water Trust Board, which right now provides a 90 percent grant and 10 percent loan to entities. Representative Saavedra asked what water innovation projects have been funded. Robert Apodaca, director, LGD, said that thus far, projects include water desalinization and water table reinjection projects. Representative Saavedra lamented the apparent fact that the South Valley will not be funded anymore, to which Mr. Apodaca said that they can ask the governor.

Senator Ingle said that funding decisions depend to a large extent on the relationship between a legislator and the governor and that those legislators not in favor do not get any projects funded, even though those projects may be critical. He also asked who is on the GFC. Ms. Miller said that the council is composed mainly of cabinet secretaries and representatives of state agencies. Senator Ingle said that it seemed like GFC is asking the legislature to appropriate a large sum and then let the governor decide how to spend the money. Mr. Apodaca said that the Water Trust Board brings projects to the legislature every year for approval. Senator Ingle said that the legislature needs to maintain some decision-making authority. Secretary Miller said that money should go into a fund, then individual projects can apply, be vetted by the board and then go to the legislature for approval. That process is similar to the water grants that the NMFA had been processing until recently. She said that funding projects in a piecemeal manner does not work.

Senator Smith pointed out that one of the goals the secretary presented is to fully fund projects, but it does not seem that the list of water projects would be fully funded given the dollar amounts for some projects. Ms. Miller clarified that projects should be fully funded or they should be fully funded in phases. Senator Smith said that last session, many projects were presented to the legislature at the last minute that had apparently never been heard in public. He asked if the GFC meets in public. Ms. Miller said that some of the subcommittees of the council do hold public hearings but that some do not.

Senator Smith said that the legislature has quite a bit of suspicion toward the executive branch, especially since many big projects are sprung on the legislature at the last minute, with no public hearings. He cited rodeo funding as one egregious example. He did appreciate, however, that communication between the two branches is starting in October, rather than one week before the legislative session ends. He said that he was very disappointed that the governor chose to balance the state books by vetoing legislative, rather than executive, projects. He said that the vetoes were not even necessary, given the nearly 20 percent reserves the state now has. Senator Smith cautioned Secretary Miller that if the executive branch does not work

with the legislature, the legislature, or at least the senate, will follow a different strategy this upcoming session. He finished his comments by saying the community development block grant process used to have a prioritization process, but that this year, the process was completely ignored and grants were given out to entities that had not even completed applications.

Senator Duran asked to be informed of exactly who is on the GFC, who is on each subcommittee and which subcommittees met in public. She then asked whether the GFC determines which water innovation projects will be funded. Secretary Miller said that the GFC helps the executive process of developing budget recommendations and prioritization of needs. Senator Duran said that water innovation money is public money and she has concerns about that money being allocated appropriately. Ms. Miller said that the money is spent according to a solicitation process based on the Procurement Code. She said that the DOE provides technical and feasibility assistance for applications before they are funded. Finally, Senator Duran asked whether the \$103 million requested by the governor is to be considered "off the top" before the traditional one-third split. Secretary Miller said that the executive is trying to look at the capital outlay process from a new perspective. She said that in the coming weeks, the executive will present many more projects for the legislature to consider.

Senator Snyder said that she wants a list of the governor's capital priorities much sooner than the first week of session. She went down the list of proposed funding and said most of them are not funded adequately. She noted with irony that the governor is asking for a mere \$12 million for Indian water rights settlements, when the legislature appropriated last year, and he vetoed, \$75 million for that same purpose. She recommended that the governor meet with Senators Domenici and Bingaman to pressure the Bureau of Reclamation to approve the Ute pipeline, in addition to the \$5 million requested (for an estimated \$300 million project).

Senator Snyder said that, personally, she would not trust water project decisions coming from the executive unless they were made by the Construction Programs Bureau (CPB) of the DOE. She said the governor should not make promises to communities and then change those commitments. Water and wastewater projects should not be partisan issues. Senator Snyder also said that Sandia National Laboratories would be much more cost-effective in administering water innovation funding and it would be able to leverage much more money.

Senator Sanchez said that he has never been contacted by the executive about potential "statewide" projects being planned in his district. He asked that legislators be notified about potential state projects in their districts. Senator Sanchez then asked Secretary Miller what she thought should be done in order to improve the prioritization process of infrastructure needs. Ms. Miller said that she wants to bring proposals to the legislature early. She also said that legislators should present initiatives to the GFC that they want considered. The old method of dividing up capital money does not work any more. She wants to fund large critical projects, and she welcomes the tough discussions that ensue following such proposals. She also said that any time an executive initiative is to be presented, the corresponding cabinet secretary should present it to the legislature.

Senator Sanchez asked Ms. Miller how statewide projects should be determined. He also invited her back to a future meeting of the subcommittee. Ms. Miller said that she wants to look

at statewide projects from policy areas and that there certainly is much more to discuss with the legislature.

Organizing and Communicating Infrastructure Needs in the State

Richard Smith, Curry County manager, representing the New Mexico Association of Counties, and Bill Fulginiti, director, New Mexico Municipal League, talked to the subcommittee about their recommendations about how to improve the capital outlay process. Mr. Smith began by presenting a list of problems currently making the process difficult, including executive and legislative processes not being linked; ICIPs not being used as the framework for funding projects; local governments often not being aware that projects are being requested on their behalf; funding being too often piecemeal, i.e., there is a long time between a priority being given by a local government and the actual availability of funds; and last minute requests sabotaging the ICIP process.

Mr. Smith gave several recommendations about improving the capital outlay process, including coordinating the capital outlay process with the ICIP process; developing criteria for evaluating and prioritizing requests; reducing the time frame for project fund availability; allowing for project development costs to be included in capital outlay appropriations; and developing a strategic funding process to ensure that multiyear and partially completed projects receive adequate funding.

Mr. Fulginiti reported to the subcommittee that most small cities do not have the financial ability to provide for water, wastewater, solid waste, police, fire and government facilities. Many cities have issued general obligation bonds, but the property tax base is often not adequate. Most infrastructure needs are currently financed locally by revenue bonds backed by various gross receipts taxes, but that revenue stream is also limited. He said that he wished all councils of governments would collect and organize local government projects. He said that the ICIP process is not taken seriously because local governments tend to stick in whatever they want, rather than what they need. He finished his comments by saying that the capital outlay process needs to be sped up, especially for water projects.

Senator Sanchez said that, in general, municipalities need to bond to capacity before going to the legislature for funding. He also said that municipalities and counties are playing the governor against the legislature by going to both for funding. He also said that when contractors on a public works project fail to deliver on the contract, the contractors should be held liable, rather than asking the legislature to provide funding to fix the problem.

The subcommittee recessed at 5:10 p.m.

Tuesday, October 17

The Capital Outlay Subcommittee was reconvened at 9:25 a.m. by President Pro Tempore Altamirano in Room 307 of the State Capitol.

Work of the Interagency Task Force

Richard Rose, chief of the CPB, presented to the subcommittee about the work of the Interagency Task Force (ITF) and of his bureau. The ITF was informally created in 2000 to address the differences between agencies in how they carry out engineering contracts and reporting and subsequently helped create the UFA for state and federal agencies to use. The task force consists of the LGD, United States Department of Agriculture Rural Development, NMFA, CPB, ACEC and Army Corps of Engineers.

Mr. Rose said that the UFA has simplified the application process for communities, since they only apply once, and several different state and federal funding agencies can process it. The UFA allows for easier leveraging of money and makes it easier to review projects' readiness. The ITF has recently considered trying to expand the UFA application to include more types of capital outlay projects and whether to require PERs as the first step in the application process.

The CPB oversees water, wastewater and solid waste projects in communities. Currently, it is managing over 1,000 projects, with each engineer in the CPB averaging 120 projects. In 2006, CPB received 270 new capital outlay projects with a value of \$63 million, twice the value from the 2005 session. Mr. Rose said that the CPB also works with other agencies, including the DFA and NMFA, to review water and wastewater project applications.

Mr. Rose also gave several ideas on how to improve the capital outlay process, including creating a single point of entry into the capital outlay process using the UFA and requiring all applicants to use it; funding community planning efforts with strict guidelines; establishing a nonsubjective system to prioritize projects statewide; and adopting minimum criteria that communities must meet in order to receive capital outlay funds.

Senator Smith said that the CPB seems backlogged and asked what Mr. Rose is doing to fix the problem. Mr. Rose said that he has requested five additional full-time-equivalent (FTE) positions. He also said that it is difficult to fill engineering positions in his bureau because of the large salary differences between the public and private sectors. Senator Smith suggested that the CPB allow larger cities to do their own project oversight. Mr. Rose said that the CPB is currently negotiating with procurement officials, which will allow some cities to certify to the DOE that projects are constructed according to its specifications. He hopes to have this new process in place by spring 2007.

Representative Arnold-Jones asked why the CPB was executing memoranda of understanding with the DFA. Mr. Rose said that DFA does not have the technical and scientific staff necessary to evaluate and oversee water projects. Representative Arnold-Jones asked whether it is becoming impossible to have volunteer-run water associations. Mr. Rose said that he thinks small water associations do not really work any more. He said that many systems may want to regionalize and have joint operations, engineering and financial staff. He said that the state could consider providing liability coverage for water associations and that the Audit Act could be amended to not require a full-fledged audit, which is very expensive.

Representative Arnold-Jones said that the capital outlay process is backward. She said that all projects should apply through the UFA, which can then be used to leverage more money, and then go to the legislature for funding. She also suggested that all capital outlay requests in

the legislature that involve drinking water or wastewater should be automatically sent to the DOE for technical review.

Representative Sandoval asked what percentage of projects administered by the CPB are facing cost overruns. Mr. Rose replied that about 60 percent of the projects in his bureau are facing that problem. Representative Sandoval said that there are too many water-related funds. Mr. Rose agreed that there is duplication and that sometimes agencies compete with each other to fund a project, but that funneling all projects through the UFA process can solve that problem.

Representative Arnold-Jones asked to be provided with a complete chart showing water project funding sources by legislator. Ms. Tackett said that the LCS could provide that information.

Representative Sandoval asked Ms. Tackett to present to the committee a recommendation regarding all the different funding sources for water projects. He also said that the legislature should consider allowing a portion of capital outlay project funding to be used for administrative costs.

Senator Snyder said that the CPB should get more technical staff, and not the DFA or NMFA. She said that many communities refuse to take loans for projects, and that they would rather try to get appropriations from the legislature. She also said that communities need to plan for maintenance costs for their projects.

Representative Zanetti asked whether the CPB has considered finishing current projects instead of starting new ones. Mr. Rose replied that his bureau is required to follow legislative language and is not able to redirect funding to other projects.

Representative Zanetti asked LCS staff about the progress of prioritization criteria. Ms. Tackett said that she hopes that the subcommittee will take up that issue again at the next meeting.

Representative Saavedra asked Mr. Rose to testify before the LFC to justify his FTE increase request.

Senator Sanchez asked if the CPB reviews capital outlay request language before the bill passes. Mr. Rose said that his staff tries to review every request during session, but a more organized approach would be welcome. Ms. Tackett said that water project language could be sent to the CPB as soon as it is introduced, so it could make technical changes to language early. Representative Sandoval suggested that the language be reviewed before it gets introduced. Ms. Tackett said that would be possible only if the legislator authorizes that the confidentiality of the request be waived. Representative Arnold-Jones then suggested that an LCS staff member be present at the House Capital Outlay Subcommittee to make changes to language immediately upon subcommittee recommendation.

Staff Response to Subcommittee Questions from September Meeting

Ms. Tackett and Mr. Gaudet presented information to the subcommittee about questions from the September meeting. Ms. Tackett described the antidonation section of the state constitution and how it relates to funding capital outlay projects for nonprofit entities. Essentially, a nonprofit entity can benefit from a legislative appropriation only if the structure built is owned by a governmental entity. There are many fine points to the issue, which will be developed into an information memorandum for the subcommittee.

Ms. Tackett also talked about the Local Economic Development Act, by which local communities can donate land and infrastructure to private for-profit entities for the purposes of economic development. These donations can take place only if the local government has in place rules to implement the act. She also gave specifics about the Court Facilities Fund and the Magistrate and Metropolitan Court Capital Fund. Currently, magistrate and metropolitan court fees are deposited into the Court Facilities Fund, which the NMFA uses to pay off bonds dedicated for building the Bernalillo County Metropolitan Court Complex. After the bonds are repaid, money will go back into the Magistrate and Metropolitan Court Capital Fund, which can then be appropriated by the legislature for court facilities statewide. Mr. Abbey said that currently there is not even enough money in the fund to maintain court buildings.

Mr. Gaudet reported to the subcommittee about the statutory authority of the State Board of Finance's (SBF) authority to approve or reject capital outlay projects at universities. He said that Section 21-1-21 NMSA 1978 gives the SBF and the Higher Education Department authority to reject capital projects, even if the legislature has already appropriated money for a project. The SBF rule allows for rejection of a project if it does not comply with "the overall statewide plan for higher education". Representative Saavedra said that section should be repealed or amended, since the SBF should not have blanket authority to reject a project that the legislature authorized. Ms. Tackett said that LCS staff will present options that the subcommittee can consider at the next meeting.

Next Steps — Subcommittee Discussion and Direction to Staff

The subcommittee discussed the subcontractor bonding requirement in state law and whether it should be repealed. Senator Snyder said the law is necessary because if subcontractors are not bonded, the cost of projects will increase. Ms. Tackett said that under previous law, a contractor's bond covered the entire project and subcontractors needed to be bonded if the contractor required it. Representative Wallace suggested raising the \$50,000 threshold at which subcontractors need to be bonded. President Pro Tempore Altamirano asked LCS staff to prepare options for the LFC or other interim committees to consider.

Senator Sanchez asked how it would be possible to require the construction of energy-efficient buildings. Ms. Tackett said that the governor required that in an executive order and the Public School Capital Outlay Council is also considering the issue. She said that it may be better to focus on energy efficiency rather than LEED certification, which is costly and does not provide that much benefit.

Speaker Lujan asked staff to prepare a review of all the options that the Capital Outlay Subcommittee has discussed about reforming the capital outlay process so the subcommittee can take action at the next meeting.

President Pro Tempore Altamirano said that he wants to ensure that projects be fully funded and directed staff to come up a plan for that.

Representative Zanetti said that she wants to finalize the list of criteria and to prioritize types of projects. She said that the subcommittee should decide what types of projects the legislature should not fund for awhile.

The minutes from the August 23 and September 25-26 subcommittee meetings were adopted unanimously.

Adjournment

The Capital Outlay Subcommittee adjourned at 11:50 a.m., and broke into a rousing rendition of Las Mañanitas in honor of President Pro Tempore Altamirano's birthday.

**MINUTES
of the
FOURTH MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**December 19, 2006
Room 307, State Capitol
Santa Fe**

The fourth meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee was called to order on December 19, 2006 at 1:15 p.m. by Senate President Pro Tempore Ben D. Altamirano, co-chair, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Ben D. Altamirano, Co-Chair
Sen. Dianna J. Duran
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Jeannette O. Wallace

Absent

Rep. Ben Lujan, Co-Chair
Sen. Kent L. Cravens
Rep. Terry T. Marquardt
Sen. Leonard Lee Rawson
Rep. Teresa A. Zanetti

Advisory Members

Rep. Janice E. Arnold-Jones

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. H. Diane Snyder

Staff

Ric Gaudet, Legislative Council Service (LCS)
Renee Gregorio, LCS
Linda Kehoe, Capital Outlay Coordinator, Legislative Finance Committee (LFC)
Jeannae Leger, LFC
Paula Tackett, Director, LCS
John Yaeger, Assistant Director for Legislative Affairs, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Tuesday, December 19**Approval of Minutes**

The minutes of the October 16-17 meeting of the subcommittee were approved.

Capital Drafting Process Improvements

Ms. Gregorio and Ms. Tackett presented recommendations to the subcommittee to make the capital outlay drafting and introduction process more efficient.

Rather than producing the final documents as the LCS has done in the past few years, instead a listing would be produced for each legislator at the end of each week. The listing would contain all projects requested by a particular legislator and include the project title, the receiving entity, the amount requested and the purpose language. The LCS would assume that once a project is requested, written up and processed, it can then "go public", meaning it could then appear on the legislator's web page and on other lists the LCS produces by county and sponsor on a weekly basis, as well as to the House Capital Outlay Subcommittee for hearing scheduling.

The subcommittee unanimously adopted the proposed change to the capital outlay process.

Criteria for Funding State Projects and Preliminary Proposals

Ms. Kehoe reviewed the list of criteria for state capital projects that was previously presented to the subcommittee. She then gave the subcommittee a list of state critical projects that have been reviewed by the LFC, based on that set of criteria. The subcommittee took no action on the list of projects.

Criteria for Funding Local Projects

Mr. Gaudet and Ms. Tackett presented proposed changes to the capital outlay request form that the LCS uses, which incorporates a list of criteria to evaluate the need for and planned status of local capital outlay projects. The changes to the form also include certain requirements that need to be fulfilled if a capital project is intended for a nonprofit entity, private economic development entity or a local government that did not include the project on its Infrastructure Capital Improvements Plan. The criteria were presented as a questionnaire on the request form, so that legislators could then evaluate projects for funding.

Senator Michael S. Sanchez expressed concern that the expanded form would end up creating even more work for legislators. Representative Wallace said that many governmental entities in her district would not be able to answer some of the required questions, given their lack of staff and expertise. Representative Arnold-Jones said that the criteria questions are

already part of her method of choosing projects, and that the list should help legislators choose needed and planned projects.

After more discussion, the subcommittee adopted unanimously the criteria list and new request form, but instructed staff to modify it slightly to address some of the members' concerns.

Time Line for Capital Bill Production, Introduction and Passage

Mr. Yaeger and Ms. Tackett presented a proposed time line for the capital outlay bill. The time line includes a provision for a deadline for the executive to submit its projects, an early date to set funding levels from the general fund and for severance tax bonds, a date for "off-the-top" funding of mutually funded statewide projects, a reasonable period of time for LCS staff to draft the bill in order to reduce the incidence of errors and a date for bill passage early enough to require approval or veto by the governor before the end of session.

The time line as presented to the subcommittee was adopted unanimously.

Additional Proposals for the Legislature on Capital Outlay

The subcommittee adopted the following recommendations:

1. no operational or program funding in the capital outlay bill; and
2. establishment of an interim capital outlay committee.

There being a large snowstorm outside and no further business, the subcommittee adjourned at 2:45 pm.

LEGISLATIVE COUNCIL SERVICE
48TH LEGISLATURE-FIRST SESSION-2007
CAPITAL OUTLAY REQUEST FORM
Revised 12/22/06

This is the printed version of the legislative council service's capital outlay request form. You may also access and download this form online by going to the legislature's web site (www.legis.state.nm.us). The form is available in PDF format or as an editable MS-Word document.

This capital outlay request form is designed to assist you in describing the project for which you are seeking funding. Completing this form is necessary to provide accurate information to the legislative council service for drafting purposes and for legislators to make informed decisions about funding projects. Submit this form to a legislative council service capital outlay drafter. **ALL CAPITAL OUTLAY REQUESTS MUST BE SIGNED BY THE SPONSORING LEGISLATOR.** If you intend to seek the support of more than one legislator in the funding of a project, a separate, signed form is required for each legislator sponsoring the project. If funding is requested from multiple legislators for the same project, please provide an identical project description for each legislator to sign.

The legislative council service will not process the capital outlay request until this form is filled out, with any required supporting documentation attached, and is signed by a legislator. The sponsoring legislator must be provided with a copy of this completed form and supporting documentation. Also, be prepared to provide this information to other legislators and committees.

The legislature intends to fund projects that are well planned and budgeted and that have been deemed important to communities. Additionally, the legislature is trying to fund projects in phases. The legislature has developed a list of criteria for funding needed projects. The criteria list is available at the legislature's web site (www.legis.state.nm.us).

Additional Requirements for Nonprofit Entity, Economic Development and Non-ICIP Projects

1. If the capital asset is to be used by a **nonprofit entity**, the requester needs to submit with this form a written commitment from the state or a political subdivision of the state that the state or the political subdivision:

- A. is or will be the owner of the asset and the fiscal agent for the nonprofit entity;
- B. will lease the asset to the nonprofit entity at fair market value; and
- C. will ensure the nonprofit entity maintains the asset.

2. If the project is an **economic development project** that represents a public-private partnership under the Local Economic Development Act, the requester needs to submit with this form the local government's approval of the project, in accordance with its ordinance adopted pursuant to that act, that validates the local government's receipt of state funding for the project.

3. If the project is intended to be for a state agency or a political subdivision of the state, but is **not part of that agency's or subdivision's ICIP**, the requester needs to submit with this form written approval by the state agency or political subdivision that it agrees to own, operate and maintain the asset.

**LEGISLATIVE COUNCIL SERVICE
48TH LEGISLATURE-FIRST SESSION-2007
CAPITAL OUTLAY REQUEST FORM**

Legislative

Sponsor: _____

Sponsor's

Signature: _____

Contact Name: _____ Phone _____

Number: _____

Email: _____

1. What is the **amount** you are requesting for the project?

2. Brief **project description** (please include action words, such as "to plan and design" or "to design and construct" as well as what the project is, such as "a multipurpose center". Do not include justification for the project, only specifics on what is requested for the project):

3. Enter the **city, town, village, chapter or pueblo** in which this project will be located. (If the project is not located in one of these, please leave blank.)

4. Enter the **county** in which the project will be located: _____

5. **What entity is requesting funding** for this project?

Municipality: _____ County: _____

School District: _____ Indian

Govt: _____

Higher Ed. Inst: _____ Other: _____

Water Association or District: _____

(only political subdivisions of the state are eligible for funding)

6. What entity will own the project upon completion?

The following questions are designed to aid legislators in prioritizing projects for funding.

7. Criteria Questionnaire

If you answer "Yes" to any of the following questions, please attach supporting documentation.

Need-Based Criteria

Is project on governmental entity's ICIP? Yes ☐ No ☐

Is project necessary to eliminate potential or actual
health or safety hazards or other liability issues? Yes ☐ No ☐

Is project required by federal, state or judicial mandate? Yes ☐ No ☐

Will project prevent deterioration of asset or correct
infrastructure problems of asset? Yes ☐ No ☐

Is project necessary to address population or client growth, and if so,
will it provide direct services to that population or clientele? Yes ☐ No ☐

Planning Criteria

Has project been thoroughly planned? Yes ☐ No ☐

Is project ready to begin? Yes ☐ No ☐
If not, when can it begin? _____

Has project received prior funding? Yes ☐ No ☐
List prior funding sources, dates and
amounts: _____

Can project be completed with this legislative appropriation? Yes ☐ No ☐

Have matching funds or a local share been secured for the project? Yes ☐ No ☐
List other funding sources and

amounts: _____

Have operational costs for completed project been identified and planned for? Yes ☐ No ☐

Has the project had public input and buy-in? Yes ☐ No ☐

Has the project been designed to be energy efficient in its operation? Yes ☐ No ☐

Can construction of the project be successfully phased, so that each phase will be operational? Yes ☐ No ☐

8. Is this a **nonprofit entity, economic development or non-ICIP** project?
(See additional requirements on page 1 of this form.) Yes ☐ No ☐
If you answer "Yes", please attach supporting documentation.

9. What is the **total estimated cost** of the project? (Please use the most accurate estimate to date, and indicate what portion of the project has been completed.)

Planning: _____

Design: _____

Construction: _____

Other (please specify): _____

Total:

10. What is the **amount** needed to **complete** the project? (if different than #9)

11. Has the **land** for the project been acquired? Yes ☐ No ☐
What entity will be or is the owner of the land?

December 19, 2006

TIMELINE FOR CAPITAL OUTLAY BILL PRODUCTION, INTRODUCTION AND PASSAGE — 2007

This timeline is based on the following assumptions:

- the house, senate and executive projects are contained in a single bill that originates in one chamber and is amended in the second;
- the reauthorizations are contained in a separate bill and include house, senate and executive reauthorizations;
- the legislature desires to send the main capital outlay bill to the governor so that he must act upon it while the legislature is in session.

(Bolded deadlines are new deadlines specific to the main capital outlay bill)

Legislature's list of critical state projects submitted	TBD	
Deadline for governor to submit proposed budget, including capital outlay	January 10	Existing deadline by statute

Session Begins	January 16	
Reauthorization Submission Deadline	February 6 (5:00 p.m.)	Existing deadline by practice
Legislative Capital Request/Bill Submission Deadline	February 12 (5:00 p.m.)	Existing deadline by joint rule
Bill Introduction Deadline	February 15	Existing deadline by statute
Capital Request Intro Deadline for Legislators and Executive	February 15	Existing deadline by joint rule
Reauthorization Bill Passes Originating Chamber	February 16	
GF Surplus & STB Capacity Determined & Agreed Upon	February 17	
Final Decisions on Mutually Funded Statewide Projects	February 18	
Reauthorization Bill Passes Second Chamber	February 19	Bill would be sent to governor ASAP

House Bill 2 passes originating chamber	February 20	Existing deadline by joint rule
All Revisions to Capital Outlay Requests Received at LCS (including House subcommittee and executive changes)	February 21	
Members' and Governor's Lists Printed and Delivered	February 22	
Individual Member and Governor's Funding Decisions Made Inputting of Funding Decisions, Proofing of Database	February 24-28	
Bill Drafting Begins; No Changes	March 2	
House Bill 2 passes second chamber	March 7	Existing deadline by joint rule
Capital Outlay Bill Passes Originating Chamber	March 8	
Capital Outlay Bill Passes Second Chamber	March 10	

Capital Outlay Bill Enrolled and Engrossed

March 11

House Bill 2 sent to governor

March 11

Existing deadline by joint rule

Capital Outlay Bill Sent to Governor

March 12

Governor must act on House Bill 2

March 14 by midnight

Constitutional deadline if earlier
deadlines met

Governor Must Act on Capital Outlay Bill

March 15

**Constitutional deadline if earlier
deadlines met**

Session Ends

March 17 (noon)

Criteria for Legislature to Evaluate Local Projects

The following criteria may be used as a guide in ranking a project's importance. Legislators can use the criteria as a tool in making funding decisions. The first set of criteria is related to the need of the project, and the second set is related to how well-planned the project is and its current status.

Need-Based Criteria

1. Project is on governmental entity's Infrastructure Capital Improvements Plan (ICIP).
2. Project is necessary to eliminate potential or actual health or safety hazards or other liability issues.
3. Project is required by federal, state or judicial mandate.
4. Project will prevent deterioration of asset or will correct infrastructure problems of asset.
5. Project is necessary to address population or client growth, and will provide direct services to that population or clientele.

Planning Criteria

1. Project has been thoroughly planned and is ready to begin.
2. Project has received prior funding and can be completed with this appropriation.
3. Matching funds or a local share has been secured for project.

4. Operational costs of project upon completion have been identified and planned for.
5. Project has had public input and buy-in.
6. Project has been designed to be energy efficient in its operation.
7. Construction of project can be successfully phased, so that each phase will be operational.